



TESTIMONY BEFORE THE SELECT COMMITTEE ON AGING
REGARDING S.B. 3,
AN ACT CONCERNING CRIMINAL BACKGROUND CHECKS FOR EMPLOYEES OF
HOMEMAKER-COMPANION AGENCIES AND HOME HEALTH AGENCIES

March 1, 2011

Senator Prague, Representative Serra, members of the Aging Committee: My name is Deborah R. Hoyt and I am President and CEO of the Connecticut Association for Home Care & Hospice (CAHCH), whose members serve over 100,000 elderly, disabled and terminally ill Connecticut citizens. We are pleased to **support** S.B. 3, regarding comprehensive background checks for employees of homemaker-companion and home health agencies, however, we are offering suggested changes to the proposed bill.

The Association is a long-time supporter of requirements for background checks as one part of a strategy to help ensure that our most vulnerable citizens are receiving high quality care and are protected to the maximum extent feasible. S.B. 3 contains two critical features that we believe are essential: 1) flexibility for providers to hire their own vendors to complete these checks in a timely and affordable manner, and 2) a clear and appropriate definition of the term “comprehensive background check” so that providers have guidance on what is expected.

The definition of a comprehensive background check in the bill is consistent with the The CT Association for Home Care and Hospice’s ***Best Practices for Hiring Unlicensed Caregivers***, a summary of which is attached to this testimony. Our best practices hiring guidelines are intended for use by all types of home care providers in CT, as well as an educational tool for the general public in selecting an agency. The three year look back period for comprehensive background checks is also consistent with guidelines for hospices enacted by the federal government in December 2008.

Our suggestions for changes to the proposed bill include:

- 1) The bill's scope should be broadened to include registries, publicly funded Personal Care Assistants and unlicensed private pay only agencies; and
- 2) Section (c)(1) should either not be adopted, or should be amended to provide that convictions for specified crimes, including, without limitation, murder, physical assault, rape, theft or burglary in any degree, drug use/sale, arson or similar conduct, can automatically disqualify an applicant for employment.

Providing such automatic disqualification would ensure the safety of our most vulnerable citizens who entrust their physical and personal safety and care to others who are placed into their homes, but who essentially operate without supervision. These citizens make up the very population the proposed bill aims to protect, and while it may seem to provide a higher level of protection, this higher level is more than warranted given the nature of the services being rendered and the potential harm to the ultimate consumer of those services. Furthermore, such blanket exclusions would help shield health care organizations from potential liability to applicants who wish to challenge the employer's good faith analysis of the factors to be considered for disqualification from employment.

- 3) We **oppose** the proposed requirement set forth in section (c)(1) that an agency must "provide the applicant with a written rejection letter, sent by registered mail, stating what evidence was reviewed and why the agency rejected the applicant," especially if the blanket exclusions suggested above are included.

The requirements of this proposed amendment appear to go beyond what is currently required for private employers under applicable law, specifically by mandating that the employer "state what *evidence* was reviewed and *why*" the applicant was rejected. Such a requirement would further burden employers by increasing their potential exposure to

legal challenges by rejected applicants, in particular given the inherent ambiguity regarding the content that would satisfy this requirement.

4) Finally, section (c)(1) is silent as to how it will be enforced; the penalty for violations; the right of a private action, if any, by rejected applicants against the homemaker-companion agency or home health agency; and whether there is a requirement that rejected applicants first exhaust some administrative remedy.

These ambiguities will inevitably have the undesirable effect of actually deterring employers from rejecting applicants they may have, and should have, otherwise rejected. In such a way, then, section (c)(1) would undercut the very protections S.B. 3 seeks to establish.

In short, we **support** S.B. 3, regarding comprehensive background checks for employees of homemaker-companion and home health agencies, and encourage amendments which will provide for automatic disqualification for certain crimes. We strongly **oppose** the requirement, as worded, of a written rejection letter for those reasons set forth above.

Thank you for consideration of our comments on this important issue.



Caring for Yourself or A Loved One: What Consumers Should Know Before Hiring A Non-Licensed Personal Caregiver

The Connecticut Association for Home & Hospice Care (CAHCH) has developed guidelines for hiring personal caregivers to help ensure that its member agencies adhere to certain standards and take reasonable and prudent steps to hire the highest quality workforce to provide care for patients. These best practices provide guidance and protection to give patients and their families a way to evaluate qualifications and credentials. They are intended for all individuals who need personal care. As the need for home care services increases, we must ensure that the caregivers who are hired to care for our loved ones are qualified and competent.

When people are looking for non-licensed caregivers, the process can be very confusing. Whether you choose to use a licensed home health agency, non-licensed agency, or private hire, you should consider the following:

- ❑ **Contract/Written Agreement:** Be sure to have a contract or written agreement with the private care worker that specifies the anticipated schedule, planned duties, and payment arrangement.
- ❑ **Taxes/Workers Compensation:** Be sure to determine if you are responsible for paying taxes. If you hire someone directly, then you are the employer and you as an individual or your family are required to pay unemployment, social security and payroll taxes (and possibly worker's compensation). If you are using an agency, do not assume that all agencies pay employee related taxes. Be sure to inquire as to whether the agency that you are working with is paying the taxes.
- ❑ **Comprehensive Background Checks:** Be sure that the agency conducts comprehensive background checks, which at a minimum should include a criminal background check. Be sure to determine if the scope of the criminal background check is national or just statewide. Also, find out how far back the check goes and if it includes physical and drug screening, a personal and professional reference check, verification of appropriate education or training (if applicable), driving records (if applicable) and a review of appropriate registries (such as the sex offender registry or Certified Nursing Assistant (CNA) registry). Clients or family members can contact either the Department of Public Health or the Department of Consumer Protection to determine if an agency has had any complaints filed against them. Please note that the CNA registry only lists those CNAs licensed in CT who have worked for Skilled Nursing Facilities. Complaints from home health or other settings are not logged there.
- ❑ **Credentials:** Be sure to inquire if the agency is licensed or registered. If a home health agency is licensed they must be licensed through the state's Department of Public Health. If a homemaker/companion agency is registered they must be registered through the state's Department of Consumer Protection.

- ❑ **Education:** Be sure that agency staff is properly trained. Appropriate education and training is currently required for Certified Nurse Aides and Home Health Aides. Also inquire if non-licensed personal care providers (i.e. PCAs), receive agency orientation and ongoing in-service education to ensure clinical competence and compliance with agency policy.
- ❑ **Back Up/On Call Services:** Be sure that there is a back-up plan in place for the provision of care if the personal care worker is unavailable. If you are using an agency, the plan should be provided through the agency. If you are working with a private hire then be sure to have pre-established arrangements if the regular caregiver is unavailable.
- ❑ **Oversight:** Be sure that there is appropriate and frequent supervision of personal care workers and that there is a plan for follow-up in place if there is a problem with the contracted caregiver. Also, determine if there is a formal complaint process in place either through the agency or by contacting the appropriate officials.

Please contact CAHCH at 203-265-9931 or email info@cahch.org for further information.

Types of Agencies that Provide Non-Licensed Personal Caregivers:

Licensed Home Health Agency: This agency is a full service agency that provides skilled services (nursing, rehabilitation services and social work) as well as home health aide services. These agencies may also provide specialty services such as hospice, behavioral health, and telemonitoring. These agencies may choose to provide homemakers and other non-licensed services. Services may be paid for by Medicare, Medicaid, Private Insurance or private pay. This agency holds a license with the State of Connecticut and is surveyed by the Department of Public Health.

Licensed Homemaker/Home Health Aide Agency- This agency can provide services to the private pay or Medicaid population. This agency holds a license with the State of Connecticut and is surveyed by the Department of Public Health. They can provide companion, homemaker, home health aides and live in caregivers.

Registered Companion Homemaker Agency- This agency is a registered business with the Department of Consumer Protection. Effective October 1, 2006 an agency that provides these services must be registered as an employer. This agency can provide personal care attendants, companions, homemakers, and live in caregivers to chronic and stable private pay clients.

Private Duty Registries: These are providers who act as referral sources or “matchmaking services” for private pay personal care. Services that may be provided are nursing, personal care attendants, companions and homemakers. The client may or may not be responsible for taxes and liability insurance, unemployment, social security and workers compensation.

Privately Hired Caregivers- The client is the employer for these individuals. The client is responsible to pay unemployment, social security, workers compensation, taxes and liability insurance.